

Arthur V. Wittich

Admitted MT & CO

Frederick P. Landers, Jr.

Admitted MT & GA

Margot E. Barg

Admitted MT, CA & AR

Hertha L. Lund

Admitted MT



*"Thy Liberty in Law"*

602 Ferguson Ave., Suite 5  
Bozeman, Montana 59718

Phone: (406) 585-5598

Fax: (406) 585-2811

[wlf@law-advisor.com](mailto:wlf@law-advisor.com)

EXHIBIT 1  
DATE 3-12-07  
HB 473

March 9, 2007

Representative Walter McNutt  
House Natural Resource Committee  
P.O. Box 200400  
Helena, MT 59620

Dear Rep. McNutt:

I would like to thank you and the other members of the Natural Resource Committee for your efforts and courage to tackle the job of drafting common sense water legislation that is good policy for all Montanans. As you know from our earlier communications, I have *always* made it clear that I represented people in litigation adverse to the DNRC's past actions. We recently requested copies of the comments on LC 1383 and were surprised to see references to us, and the litigation we are representing senior water clients on in Four Corners. The purpose of this letter is to set the record straight in reference to those criticisms.

For instance, an attorney who represents new water developers in the same Four Corners litigation stated several times in his comments that legislation "should not be designed to dictate the outcome of a lawsuit." This is an interesting comment since one of the bills he lobbied for (HB 373) would have provided legislative support for past actions taken by the DNRC to enhance and allow water use and rights by his clients that we have argued in litigation is contradictory to current law. As one commentator (finally) admitted to you, he and others have been litigating these same issues.

To reiterate, our firm has represented existing users in administrative and legal actions concerning new use of water from large commercial wells without permits and adequate protections. Our clients are the "little guys" with very senior water rights who are concerned about DNRC's allowance of improper water use. In fact, the developers involved in the litigation have been allowed to use water without full permits to support their development of a massive commercial and residential complex.

Additionally, the legal counsel for one Four Corners developer in his comments suggested that the "proponents of LC 1383" are seeking to "dictate the outcome of ongoing litigation." I want to make this very clear: my clients were not seeking and still are not seeking legislation. The status quo allows for water development in closed basins on certain terms, without legislative amendment. We are instead monitoring the legislation because DNRC and attorneys involved in the litigation sought legislation earlier that would have proposed statutory amendments as cover for their past actions. Therefore, we were concerned about their bills dictating the outcome of litigation, which ironically is exactly what we are now being criticized for.

In an even more direct attack on my clients, one commentator stated, "[t]his seems to be designed to simply allow the Faust et al litigants to attack Utility Solutions' project. It is becoming very apparent about where, why and how LC 1383 is in its present form." If that attorney were forthcoming, he would have told the members of the committee during the hearing on HB 373 that the bill benefited certain clients involved in the same litigation. He would have also disclosed that he was seeking legislation to provide cover for action that the DNRC has taken on behalf of his clients. Instead, he has decided to launch a personal attack on individuals who have been forced to seek expensive remedies in court to protect their rights that have been infringed by powerful developers and the DNRC, who believe they can make up new law as they go. These developers have been incensed since day one with any citizens' rightful objections to the irresponsible development near the Gallatin River, and now continue their anger by even trying to chill my clients' participation in the legislative process.

We find that your bill, LC 1383, is a solid approach to protecting senior water rights holders while allowing limited use of ground water with reasonable safeguards. In conclusion, we do not need legislation to support our litigation efforts, but also hope that the legislature does not pass legislation that aides improper water use or experimental, unproven augmentation. We would rather have no legislation at all; however, if legislation is needed to assist sound development of groundwater, than we support an approach that protects senior water rights holders and provides solid sideboards on unmanaged development and pumping of Montana's most precious resource—water.

Sincerely,



Arthur V. Wittich  
AVW/llb

cc:

Four Corners Area Legislators